

5. ENFORCEMENT LESSONS LEARNED FROM FIREARMS TRAFFICKING INVESTIGATIONS

ATF's review of trafficking investigations permits ATF to identify some of the important channels through which criminals are obtaining firearms, and provide insights into how they work. It also demonstrates that law enforcement can be successful in uncovering the illegal sources of firearms in a community and in holding gun traffickers accountable for their crimes. There are, however, challenges in enforcing the Federal firearms laws against gun traffickers.

5-1. Channels of Illegal Supply

ATF's review of recent trafficking investigations clearly demonstrates that many firearms are diverted from legal commerce through a variety of illegal channels that law enforcement agencies can target effectively to reduce criminal and juvenile access to firearms.

Trafficking by corrupt FFLs. Although FFL traffickers were involved in the smallest proportion of ATF trafficking investigations, under 10 percent, cases involving FFL traffickers were associated with the largest total number of illegally diverted firearms, over 40,000, as compared to the other trafficking channels.³⁴ All investigations involving FFL traffickers were associated with by far the highest average number of guns per investigation, over 350. But this number rose to over 560 guns in investigations of FFLs acting alone, and to over 575 guns when FFLs conspired with unlicensed sellers. Trafficking cases involved retail firearms dealers, pawnbrokers, and residential FFLs.

Gun shows and flea markets. Gun shows and flea markets are a major venue for illegal trafficking. About 14 percent of the investigations involved gun shows and flea markets. These investigations involved an average of 130 guns, the second highest number of trafficked guns per investigation, and were associated with approximately 26,000 illegally diverted

firearms. Gun show investigations involved both FFL traffickers and unlicensed dealers.

Straw purchasers. Straw purchasing rings and small scale straw purchasers comprised nearly 50 percent of the trafficking investigations, by far the largest number of trafficking investigations, and although the average number of guns per investigation was under 40, they accounted for nearly 26,000 trafficked firearms, about the same number of firearms as gun show investigations. Straw purchasers may be friends, paid associates, relatives, intimates, or members of the same gang.

Trafficking by unlicensed sellers. Unlicensed sellers (not associated with gun shows and not straw purchasers) were the focus of about 20 percent of the investigations, involving over 22,000 trafficked firearms, and about 75 guns per investigation.

Trafficking in stolen firearms. Survey evidence indicates there are at least 500,000 firearms stolen annually from residences.³⁵ It is, therefore, not surprising that some of these firearms are circulating in the illegal market, as are guns stolen from FFLs and common carriers. Trafficking investigations involving firearms stolen from residences, FFLs, and common carriers combined made up about a quarter of the trafficking investigations, and were associated with over 11,000 trafficked firearms. Because of the small number of investigations involving

³⁴ Firearms may be trafficked along multiple channels; therefore, an investigation may be included in more than one of the categories described.

³⁵ Philip J. Cook and Jens Ludwig, *Guns In America*, Police Foundation, 1996.

thefts of firearms from common carriers, about 2 percent of the investigations, this trafficking channel yielded the smallest total number of firearms, although it averaged a substantial number of illegally diverted firearms per investigation, over 66.

Regional variations. Regional variations in the trafficking channels in ATF investigations suggest that the illegal market in guns may operate differently in different areas of the country. For instance, straw purchasing was involved in almost two thirds of ATF's trafficking investigations in its Northeast region, but closer to a quarter of its trafficking investigations in its Southwest and Western regions. Without additional information, it is not possible to know whether regional differences reflect differences in investigative practices, the illegal market, or both. ATF trace analysis also reveals differences in crime gun patterns among different cities.³⁶

5-2. Impact of Enforcement

Convicted felons as traffickers. Although primarily aimed at the illegal supplier, about 45 percent of the trafficking investigations involved convicted felons in various roles. About 23 percent of the investigations included violations involving convicted felons buying, selling, or possessing firearms. Altogether, a quarter (669) of the traffickers identified in the investigations were convicted felons. A key finding of this report is that trafficking investigations lead to the apprehension of armed violent criminals, who are also important suppliers of the illegal market in guns.

Reducing criminal access to guns. These "criminals behind the criminal" were collectively responsible for the trafficking of over 84,000 firearms. Half of the trafficking investigations

involved guns known to be used in other types of crime, including felony possession, drug offenses, homicide, assault, and robbery. ATF estimates that trafficking investigations result in the actual seizure of about a quarter of the firearms ultimately shown to be trafficked by the targets. By arresting firearms traffickers, the number of firearms easily available to violent offenders can be reduced.

Enforcement successes. The Gun Control Act proscribes and penalizes illegal trafficking. ATF, supported by prosecutors, is enforcing the laws aggressively. ATF recommended almost three-fourths of the trafficking investigations for prosecution, nearly 90 percent to a U.S. Attorney, and the remainder to State and local prosecutors. Of these, 90 percent (over 1,700 defendants) were accepted for prosecution. Of the over 60 percent of the defendants who were fully adjudicated at the time of the survey, only 3 percent were found not guilty or dismissed. Over three-quarters of the defendants found guilty were sentenced to terms of incarceration, from sentences ranging from 12 months or less to life in prison. Altogether, as a result of these investigations, 828 defendants were sentenced to a cumulative 7,420 years in prison.

Necessity of regulatory enforcement. The major role played by FFLs as traffickers supplying the illegal market — from gun stores, pawnbrokers, gun shows, and residences, alone and in combination with straw purchasers and unlicensed sellers — confirms the need for a focused regulatory inspection and enforcement program based on trafficking and related indicators of potential illegal activity. Such a program has been initiated by ATF, and has been described in a report on regulatory enforcement published earlier this year by ATF.³⁷

³⁶ *Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 27 Communities*, Youth Crime Gun Interdiction Initiative, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, February 1999.

³⁷ *Commerce in Firearms in the United States*, February 2000, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

5-3. Enforcement Issues

Systematic review of ATF's investigative experience led to some startling findings. While ATF agents and their State and local partners are successfully identifying firearms traffickers, U.S. Attorneys are accepting a high percentage of the cases, and juries are bringing in guilty verdicts, persons who traffick in firearms are often not being prosecuted for that conduct; instead, they are being prosecuted for other related conduct. Moreover, the penalties available for many corrupt FFLs who traffick hundreds of firearms, may be limited to misdemeanor recordkeeping violations. In addition, a trafficker who trafficks 100 guns is subject to the same penalty as the straw purchaser who transfers 5 guns.

Obstacles to prosecution of straw purchasers and unlicensed dealers. Of the 638 investigations (41.7 percent of 1,530) where ATF agents reported that straw purchasing violations were occurring, a total of 427 were recommended for prosecution and not declined by the prosecutor (67 percent of 638; 51 were declined and 160 were still ongoing). The prosecutor charged at least one defendant with making false statements to acquire firearms in 190 of the 427 cases accepted for prosecution in which ATF agents reported straw purchasing was occurring.

Of the 486 investigations (31.8 percent of 1,530) where ATF agents reported that dealing without a license violations were occurring, a total of 296 of these investigations were recommended for prosecution and accepted by the prosecutor (61 percent of 486; 37 were declined and 153 were still ongoing). The prosecutor charged at least one defendant with dealing without a license in only 112 of the 296 cases accepted for prosecution in which ATF agents reported dealing without a license was occurring.

Thus, although ATF agents reported that straw purchasing and dealing without a license violations were occurring in the cases accepted for prosecution, the prosecutor was only able to charge at least one defendant with these violations in less than 45 percent of the straw purchasing cases and less than 38 percent of the dealing without a license cases. The fact that prosecutors accepted the cases shows that the conduct was viewed as constituting serious offenses. However, the relatively low percentage of charges facially tied to the trafficking conduct suggests that violations explicitly relating to firearms trafficking present challenges in court.

Challenges to enforcement against corrupt FFLs. The most common violation by FFLs associated with trafficking is recordkeeping violations. Failure to keep required records was found in almost half of the trafficking investigations involving FFLs, and the FFL making false entries in the records was found in just under a fifth of these investigations. These violations are primarily misdemeanors, despite being associated with investigations involving a high volume of trafficked firearms.

Limited penalties for large scale traffickers. The case review shows that while most trafficking investigations involve under 50 firearms, some investigations involve more than 50 firearms. Yet, the sentencing guidelines do not distinguish between a trafficker responsible for diverting 50 or 1,000 firearms. Thus, punishment can be disproportionately low given the gravity of the conduct and the threat to public safety. The more firearms illegally trafficked, the greater risk that some of those firearms will be used to commit serious crimes. The sentencing regime should be changed so that sentences are proportionate to impact. To address this concern, the Department of the Treasury has sought changes in the sentencing guidelines.³⁸

³⁸ See letter from James E. Johnson, Under Secretary of the Treasury (Enforcement) to the Honorable Diane E. Murphy, Chair, U.S. Sentencing Commission, January 21, 2000; letter from James E. Johnson, Under Secretary of the Treasury (Enforcement) to Mr. John R. Steer, General Counsel, U.S. Sentencing Commission, November 17, 1999.

5-4. Investigative Partnerships and Resources

Role of State and local law enforcement. The case review reveals a rapidly developing capability to identify and apprehend gun traffickers. Most ATF trafficking investigations, 68 percent (1,037 of 1,530), involved the cooperation of State and local law enforcement agencies. This close working relationship seems especially appropriate because 70 percent of the trafficking investigations involved intrastate trafficking and about 10 percent involved trafficking in firearms stolen from residences. While slightly less than 10 percent of case referrals were to a State or local prosecutor, State and local trafficking enforcement can be expected to develop further with the growing use of firearms and ballistics trace information by State and local law enforcement agencies.

Firearms tracing. Nearly 20 percent of the trafficking investigations were initiated through trace analysis after the recovery of crime guns. Beyond the initiation of investigations, tracing was used as an investigative tool to gain information on recovered crime guns in 60 percent of the investigations.

Secondhand guns. The important role of tracing is reflected in the fact that a quarter of investigations involve only secondhand guns, while about 75 percent of the investigations involve at least some new guns. New guns are effectively traceable to the last retail purchaser, while secondhand guns are traceable only to the first purchaser, who may be several possessors removed from the source who supplied the gun to the criminal. ATF does not know what proportion of gun crimes are committed with new and secondhand firearms. It is clear, however, that secondhand firearms play a major role in firearms trafficking.

Continued growth of our ability to reduce the illegal market in firearms through enforcement activity clearly depends on expansion of our investment in comprehensive tracing of firearms and use of trace analysis, on investigative practices like the systematic debriefing of arrested violent offenders on the sources of their guns, and on the deployment of the National Integrated Ballistics Information Network (NIBIN), which can link spent cartridges and bullets to traceable firearms.